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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,494	02/06/2004	Lukas Eisermann	31132.43 / PC810.00	6640
46333 7590 03/05/2008 HAYNES AND BOONE, LLP 901 Main Street Suite 3100 Dallas, TX 75202				
EXAMINER				
STEWART, ALVIN J				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
03/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/773,494

**Applicant(s)**

EISERMANN ET AL.

**Examiner**

Alvin J. Stewart

**Art Unit**

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 22-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

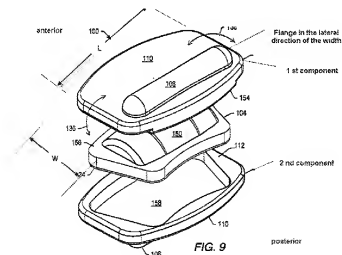
(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-7, 10, 14-17, 22 and 23 are rejected under 35 U.S.C. 102(c) as being anticipated by Krueger et al US Pub. 2006/0116768 A1.

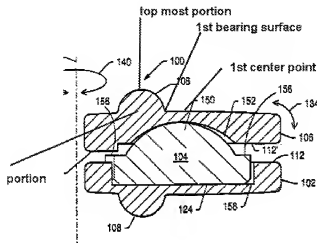
Krueger et al discloses an intervertebral disc comprising a first and second components (106 & 102)) having a first and second bearing surfaces (110), a first and second laterally extending flanges (108) and a first and second articular surfaces (150 & 152).

See Figure 9 disclosing a flange (108) extending in the lateral direction of the width.

Regarding the width, the length and the anterior and posterior location of the implant (see drawing below).



Regarding the first and second flanges and the relationship between each flange with respect to the bearing surfaces and the center points of each component (see Figure below).



Regarding claim 3, see Figs. 7 & 10.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8, 9, 11-13 and 24-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger et al US Pub. 2006/0116768 A1 in view of Huppert et al US Patent 7,056,344.

Krueger et al discloses the invention substantially as claimed. However, Krueger et al does not disclose hole in the flange, a coating with a bone-growth promoting substance, an implant made of a cobalt-chrome-molybdenum metallic alloy and a method disclosing a step of installing the device from a lateral direction.

Huppert et al teaches an implant having a flange with holes for the purpose of promoting the growth of bone tissue around the flange, a coating to promote osseointegration (see paragraph 126) and a step of inserting an implant from a lateral direction (see Figs. 3 and 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Francois reference with the Huppert et al reference in order to promote the growth of bone tissue around the flange.

Regarding the coating and the material property of the implant, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material property and add a coating of bone-growth promoting substance in order to promote the growth of bone tissue and have a biocompatible implant.

Regarding claim 2, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to change the relationship of the first flange offset relative to the second flange because Applicant has not disclosed that by making the flanges offset relative one to the other provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the flanges aligned with each other because it would perform equally as well.

Therefore, it would have been an obvious matter of design choice to modify the Krueger et al reference to obtain the invention as specified in claim 2.

Regarding claim 11, see elements 25.

Regarding the notches in claim 13, see notches 118 in Figs. 28-30.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin J Stewart/  
Primary Examiner, Art Unit 3774

February 26, 2008.